

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Jurisdictional Separations
and Referral to the
Federal-State Joint Board

)
)
)
)
)

CC Docket No. 80-286

REPLY OF QWEST CORPORATION

Craig J. Brown
Timothy M. Boucher
Suite 950
607 14th Street, N.W.
Washington, DC 20005
(303) 383-6608

Attorneys for

QWEST CORPORATION

Of Counsel,
James T. Hannon

November 20, 2006

TABLE OF CONTENTS

	Page
SUMMARY.....	ii
INDEX OF COMMENTERS.....	v
I. INTRODUCTION	1
II. STATES HAVE NO AUTHORITY TO “SEPARATE” COSTS BETWEEN JURISDICTIONS	3
III. PRICE CAP LECs ARE NOT REQUIRED TO UPDATE DIRECT ASSIGNMENTS DURING THE SEPARATIONS FREEZE	3
IV. THERE IS NO BASIS FOR NASUCA’S CLAIM THAT INTERSTATE RATES ARE EXCESSIVE.....	4
V. MOST LECS FACE VIGOROUS COMPETITION IN VIRTUALLY ALL THEIR MARKETS	6
VI. THE GROSS ALLOCATOR FOR COMMON LINE INVESTMENT SHOULD NOT BE REVISED	7
VII. IT IS NOT NECESSARY TO SUBJECT BROADBAND SERVICES TO PART 64 PRIOR TO SEPARATIONS	8
VIII. SERVICE BUNDLING BENEFITS CUSTOMERS OF REGULATED SERVICES	9
IX. THE COMMISSION SHOULD REJECT STATE PUCS’ PROPOSED “EXIT RAMP” CONDITIONS.....	11
X. THERE IS NO JUSTIFICATION FOR ISSUING A DATA REQUEST AT THE PRESENT TIME	12
XI. CONCLUSION	13

SUMMARY

With the exception of the joint filing representing the interests of state consumer advocates (*i.e.*, NASUCA), there was a fair degree of agreement among the parties filing comments on the Commission's *FNPRM* on separations. For example, most parties, other than NASUCA, favored extending the existing separations freeze and acknowledge that separations requirements serve little, if any, purpose for carriers subject to price cap regulation. NASUCA, on the other hand, is a strong proponent of more expansive separations regulation, claiming among other things, that: local exchange competition is negligible and does not constrain rates; incumbent LEC interstate and intrastate rates are excessive; state regulatory agencies have the authority to reassign costs between jurisdictions; costs are over-allocated to intrastate regulated services; and price cap companies are not complying with existing separations rules. Qwest's Reply demonstrates that all of these allegations are without merit and should be rejected by the Commission.

NASUCA's claim that competition is negligible and does not constrain competition is not credible. LECs have lost millions of access lines to both wireless and wireline competitors since the passage of the 1996 Act. Qwest, itself, has lost approximately 4.8 million retail access lines in the period from December 2000 through September 2006. To argue that competition of this magnitude has no effect on rates, is at odds with the facts.

Contrary to NASUCA's suggestions, state regulators have no right to reclassify intrastate costs as interstate costs if regulators dislike the outcome of the separations process. NASUCA is also mistaken in its claim that price cap LECs are violating the Commission's *Separations Freeze Order* by not updating direct assignments during the pendency of the freeze. As several

state regulators acknowledge, price cap LECs are merely following the explicit direction of the Commission.

Qwest also disputes NASUCA's contention that interstate rates are excessive because carriers have not properly assigned costs to special access and nonregulated services such as DSL. NASUCA's real issue appears to be that it opposes the Commission's separations freeze and recent rulings regarding the application of Part 64 -- not that carriers have failed to comply with the Commission's rules.

Qwest also opposes unilateral changes to the gross allocator for common line investment, as proposed by NASUCA and the Idaho and Pennsylvania PUCs. Problems with the pre-freeze Part 36 rules cannot be remedied by "tinkering" with individual allocators or rules. The Commission should start with a "clean slate" and focus on its goals of developing a set of rules that are simple to administer and competitively neutral.

Contrary to the assertions of NASUCA, service bundling benefits customers of LEC regulated services. Rather than viewing LEC service bundling as a normal response to competition that benefits many customers, NASUCA and its expert, Ms. Baldwin, see it as an anti-competitive technique. NASUCA's arguments against bundling have little, if anything, to do with separations and should be rejected.

Several State PUCs propose that LECs be required to satisfy certain "exit ramp" conditions before separations can be eliminated for individual LECs. The Commission should reject the PUCs' proposal. Not only do the PUCs propose that the Commission condition relief from separations on an issue over which the Commission has no jurisdiction (*i.e.*, waiver of any state claim that a carrier's property was unlawfully confiscated), but the PUCs' overly-rigorous

conditions ignore the fact that there may be significant differences between state laws governing the provision of telecommunications services.

Despite NASUCA's assertion that a detailed data request is necessary, no commenting party presents any compelling reason why such a data request should be issued in the near future. Nothing has changed with the extension of the separations freeze that would justify requiring LECs to perform separations studies to respond to a data request that is based on obsolete separations rules. Moreover, as Qwest indicated in its comments, it is doubtful that Qwest or any other LEC would be able to perform traditional separations studies in a timely manner due to a lack of necessary systems and trained personnel. No purpose would be served in issuing a data request until the Commission has first adopted a new simplified, competitively-neutral separations process.

In summary, separations reform should either be preceded by IC and USF reform or occur simultaneously with such reforms. The resulting separations rules should be administratively simple and competitively neutral. Qwest continues to believe that the Commission can best achieve such a result with the use of a small number of fixed allocation factors. If the Commission is unable to reform separations during the three year period for which the separations freeze has been temporarily extended, it should continue the freeze until separations reform can be accomplished. This will remove regulatory uncertainty.

INDEX OF COMMENTERS

Alexicon Telecommunications Consulting	Alexicon
BellSouth Corporation	BellSouth
AT&T Inc.	AT&T
Idaho Public Utilities Commission.....	Idaho PUC
Independent Telephone and Telecommunications Alliance, National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, Eastern Rural Telecom Association	ITTA
Iowa Utilities Board.....	Iowa Utilities
John Staurulakis, Inc.....	John Staurulakis
National Association of State Utility Consumer Advocates, The New Jersey Division of Rate Counsel, The Maine Office of the Public Advocate	NASUCA
Pennsylvania Public Utility Commission	Pennsylvania PUC
Public Service Commission of Wisconsin.....	Wisconsin PSC
United States Telecom Association.....	USTA
Verizon	Verizon
Vermont Public Service Board, Vermont Department of Public Service, Nebraska Public Service Commission.....	Vermont PSB
Western Telecommunications Alliance.....	WTA

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Jurisdictional Separations)	CC Docket No. 80-286
and Referral to the)	
Federal-State Joint Board)	

REPLY OF QWEST CORPORATION

Qwest Corporation (“Qwest”), through counsel, hereby replies to comments filed on August 22, 2006 in response to the Federal Communications Commission’s (“Commission”) *Order and Further Notice of Proposed Rulemaking* on jurisdictional separations.¹

I. INTRODUCTION

Fifteen comments were filed in response to the Commission’s *Notice*. The commenting parties can be classified as follows: 1) large local exchange carriers (“LECs”) subject to price cap regulation; 2) consultants and associations representing small LECs; 3) state public utility commissions; and 4) state ratepayer/consumer advocates. With the exception of the joint filing representing the interests of state consumer advocates (*i.e.*, NASUCA), there was a fair degree of agreement among the parties. For example, most parties, other than NASUCA, favor extending the existing separations freeze.² Several commenters also acknowledge that the Part 36 rules in effect prior to the separations freeze are unnecessarily complicated and outdated.³ Similarly,

¹ *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, Order and Further Notice of Proposed Rulemaking, CC Docket No. 80-286, 21 FCC Rcd 5516 (2006) (“*Notice*” or “*FNPRM*”).

² See Verizon at 15-16; Alexicon at 2, 6; WTA at 1; USTA at 1; John Staurulakis at 1; Pennsylvania PUC at 1; Qwest at 1; BellSouth at 6; AT&T at 6. See also, Wisconsin PSC at 1, noting the usefulness of the previous three-year extension.

³ See, *e.g.*, Qwest at 7-9; Verizon at 15-18; Vermont PSB at 22-26.

many commenters recognize that the separations process could be affected significantly by Commission decisions in the Intercarrier Compensation (“IC”) and Universal Service (“USF”) proceedings and advocate that separations changes be deferred until the Commission completes its IC and USF proceedings.⁴ With the exception of NASUCA, most commenters also acknowledge that separations requirements serve little, if any, purpose for carriers subject to price cap regulation.⁵

In arguing for more extensive regulation, NASUCA and its experts assert, among other things, that: local exchange competition is negligible and does not constrain rates;⁶ incumbent LEC interstate rates are excessive;⁷ state regulatory agencies have the authority to reassign costs between jurisdictions;⁸ the Bells are re-monopolizing telecommunications;⁹ costs are over-allocated to intrastate regulated services;¹⁰ and price cap companies are not complying with existing separations rules.¹¹ All of these allegations are without merit and should be rejected by the Commission.

In the comments which follow, Qwest responds to NASUCA’s claims and a few other issues raised in the opening comments.

⁴ See Qwest at 4-7; ITTA at 4-9; USTA at 6-7; WTA at 2-3.

⁵ See Iowa Utilities at 2; Verizon at 9-11; AT&T at 4; Idaho PUC at 5-6; USTA at 4-5; John Staurulakis at 5-6; BellSouth at 5; Wisconsin PSC at 3; Vermont PSB at 6; Qwest at 7-11.

⁶ NASUCA at 2 and Baldwin Affidavit at 5, 9, 10-11, 30, 43 and n. 86.

⁷ NASUCA at 9 and Baldwin Affidavit at 90-91.

⁸ NASUCA at 6-7 and Baldwin Affidavit at 11-12.

⁹ See NASUCA at 10 and Baldwin Affidavit at 79.

¹⁰ Baldwin Affidavit at 41-46, 73.

¹¹ *Id.* at 9, 73.

II. STATES HAVE NO AUTHORITY TO “SEPARATE” COSTS BETWEEN JURISDICTIONS

The Communications Act of 1934, as amended, makes it clear that the only role for state regulators in the separations process is an advisory role through the Joint Board.¹² Contrary to NASUCA’s suggestions, state regulators have no right to reclassify intrastate costs as interstate costs if regulators dislike the outcome of the separations process.¹³ Likewise, state regulators have no authority to re-interpret the Commission’s rules regarding direct assignment and frozen separations factors and category relationships.

One thing is crystal clear regarding separations. That is, state regulatory agencies cannot ignore or modify separations rules if they disagree with these rules or the resulting cost assignments. “The field of separations -- the assignment of telecommunications costs between state and interstate jurisdictions -- has been entirely preempted by the Commission.”¹⁴ As such, there is no need for the Commission to issue an interim order, as NASUCA requests.¹⁵

III. PRICE CAP LECs ARE NOT REQUIRED TO UPDATE DIRECT ASSIGNMENTS DURING THE SEPARATIONS FREEZE

NASUCA is also mistaken in its claim that LECs are violating the Commission’s *Separations Freeze Order* by not updating direct assignments during the pendency of the freeze.¹⁶ Several state regulators agree that LECs are merely following the explicit direction of the Commission in not updating direct assignments and continuing to use frozen factors and

¹² 47 U.S.C. § 410(b).

¹³ NASUCA at 6-7 and Baldwin Affidavit at 11-12.

¹⁴ Qwest at 24 citing *Hawaiian Telephone Company v. Public Service Commission of the State of Hawaii*, 827 F.2d 1264, 1275 (9th Cir. 1987), *cert. denied*, 487 U.S. 1218 (1988).

¹⁵ *Also see*, Section IV, *infra*, which notes that state ratemaking authority is determined by state law, as the Commission has recognized.

¹⁶ *See* NASUCA at 10, 12 and Baldwin Affidavit at 14, 73.

category relationships in effect as of June 30, 2001.¹⁷ In addition to the Commission letter, referenced by state regulators, directing LECs to use frozen category relationships, Qwest believes that the Commission's Part 36 rules also require such an outcome.¹⁸

IV. THERE IS NO BASIS FOR NASUCA'S CLAIM THAT INTERSTATE RATES ARE EXCESSIVE

NASUCA contends that interstate rates are excessive because carriers have not properly assigned costs to special access and nonregulated services.¹⁹ Qwest disagrees. NASUCA's real issue appears to be that it opposes the Commission's separations freeze and recent rulings regarding the application of Part 64 -- not that carriers have violated the Commission's rules.²⁰

¹⁷ See Vermont PSB at 19 citing a letter from Fatina Franklin of the Commission to Verizon. "The letter stated that carriers were not permitted to make any adjustment to frozen categories until the freeze expires." *Also see*, Idaho PUC at 16; Verizon at 18-21.

¹⁸ As Qwest stated in its comments in response to NARUC's assertion that direct assignments had to be updated annually during the freeze:

The language that NARUC references on the requirement that direct costs be updated annually is contained in 47 C.F.R. § 36.3(a) of the Commission's separations rules and applies generally to all LECs. On the other hand, 47 C.F.R. § 36.3(b) applies specifically to ILECs subject to price cap regulation and requires that all investment categories and sub-categories be frozen. It is impossible both to annually update direct cost assignments and to use frozen factors. Clearly, 47 C.F.R. § 36.3(b) is an exception to the general rule contained in 47 C.F.R. § 36.3(a). Standard rules of statutory construction dictate that when there is a conflict between a general rule and a specific rule, the specific rule controls.

Qwest at 25 [footnotes eliminated].

¹⁹ NASUCA at 9.

²⁰ See *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements, Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises, Consumer Protection in the Broadband Era*, Report and Order and Notice of Proposed

NASUCA presents no evidence concerning possible Part 64 violations and ignores the fact that LECs' rates are unaffected by cost changes under price cap regulation (*i.e.*, other than exogenous cost adjustments). Furthermore, Qwest's interstate special access rates have been lawfully tariffed in accordance with the Commission's *Pricing Flexibility Order*²¹ and are the subject of another pending Commission proceeding.²²

Prior to the adoption of price cap regulation in 1991, all LECs were subject to rate-of-return regulation and rates were closely scrutinized by Commission staff in annual tariff proceedings. As such, there should be no question that LECs' rates were just and reasonable going into price cap regulation. Since 1991, LECs' rates have been governed by the Commission's price cap mechanism with few modifications (*e.g.*, elimination of sharing, the CALLs Plan, special access pricing flexibility, etc.). Price cap regulation has given LECs the incentive to operate in the most efficient manner and both LECs and their customers have

Rulemaking, 20 FCC Rcd 14853, 14924-25 ¶ 130 (2005) ("*Broadband Order*"), *pets. for review pending*, *Time Warner v. FCC*, Case No. 05-4769 (3rd Cir.).

²¹ See *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999), *aff'd sub nom.*, *WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

²² See AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593, filed Oct. 15, 2002, which the Commission incorporated into its January 31, 2005 Order and Notice of Proposed Rulemaking. See *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005). As such, the level of interstate special access rates is a matter that is beyond the scope of this separations proceeding.

benefited from this form of regulation. NASUCA's unsupported claims of excessive interstate rates should be rejected as meritless and beyond the scope of this separations proceeding.²³

Furthermore, the Commission should reject NASUCA's request that the Commission issue an order concerning states' ratemaking authority and "states' rights to remove the costs of non-regulated and interstate activities from intrastate rates."²⁴ No purpose would be served by such an order. The Commission has no jurisdiction over intrastate rates and the states have no authority to modify jurisdictional cost assignments. State ratemaking authority is determined by state law. Moreover, as noted above, the Commission has preempted the field of separations and states have no authority to determine how costs are assigned between jurisdictions.²⁵

V. MOST LECS FACE VIGOROUS COMPETITION IN VIRTUALLY ALL THEIR MARKETS

NASUCA's claim that competition is negligible and does not constrain competition is not credible. LECs have lost millions of access lines to both wireless and wireline competitors since the passage of the 1996 Act. Qwest, itself, has lost approximately 4.8 million retail access lines in the period from December 2000 through September 2006.²⁶ Furthermore, the number of

²³ NASUCA's claims of excessive intrastate rates are also beyond the scope of this proceeding. Furthermore, LECs' intrastate rates are governed by state law and state commission decisions (*e.g.*, state price cap mechanisms). State consumer advocates have had ample opportunity to participate in state legislative and regulatory proceedings that determine LECs' intrastate rates. Furthermore, cost changes have little, if any, impact on carrier rates in states that have adopted price cap regulation. No purpose is served in this separations proceeding by addressing the level of state rates -- that is an issue that is beyond the scope of the Commission's jurisdiction.

²⁴ NASUCA at 7 and Baldwin Affidavit at 18-27, 62-63.

²⁵ See Section II, *supra*.

²⁶ Qwest's number of retail access lines decreased from 17,250,000 in December, 2000 to 12,473,000 in September, 2006. See Qwest Communications International Inc. Form 10-K/A filed Nov. 8, 2004 and Qwest Corporation 10-K/A filed Nov. 15, 2004. See Qwest Corporation 10-Q filed Oct. 31, 2006.

wireless lines now exceeds landlines in the United States.²⁷ Additionally, landline interstate toll usage has declined significantly since the mid-1990s, as Drs. Carlton, Sider and Shampine noted in their declaration in the *LEC Nondominant Proceeding*,²⁸ as wireless usage continues to grow.²⁹ To argue that competition of this magnitude has no effect on rates, is at odds with the facts.

VI. THE GROSS ALLOCATOR FOR COMMON LINE INVESTMENT SHOULD NOT BE REVISED

NASUCA's experts and the Idaho and Pennsylvania PUCs argue that the gross allocator for common line investment (*i.e.*, 75% intrastate/25% interstate) should be revised.³⁰ Dr. Laube, NASUCA's expert, goes a step further and argues that the gross allocator should be revised annually to reflect changes in usage.³¹ This makes no sense given the fact that common line costs do not vary with usage. Qwest strongly opposes Dr. Laube's proposal which attempts to

²⁷ See the Commission's Local Telephone Competition and Broadband Deployment Report: Local Telephone Competition as of Dec. 31, 2005, Table 7. The total number of landlines was 175,350,377 as of December 31, 2005 while the total number of wireless lines was 203,699,128, a difference of 28,348,751 at the end of 2005. Other sources estimate that wireless subscribership was as high as 213 million at the end of 2005. See Annual Report on CMRS Competition, WT Docket No. 06-17 (Terminated), rel. Sept. 29, 2006, at Table 5, "NRUF-Estimated Mobile Telephone Subscribers."

²⁸ In asserting that LECs had little or no market power in the market for interstate interLATA services, Carlton cited the Commission's "Statistics of the Long Distance Telecommunications Industry," showing that for wireline carriers during the period 1995 through 2002, average residential monthly minutes ("MOUs") declined from 71 MOUs per month to 41 MOUs, a 43% decline. See Qwest Comments, WC Docket No. 02-112, CC Docket No. 00-175, filed June 30, 2003 in the attached (thereto) Declaration of Dennis W. Carlton, Hal Sider and Allan Shampine at 19-20. Also see, Federal State Joint Board Monitoring Report: December 2005 Monitoring Report, Released 12/05, Table 8.1, Interstate Switched Access Minutes of Use for ILECs, which shows that interstate switched access MOUs declined from a peak of 566.9 billion in 2000 to 422.4 billion in 2004, a decline of more than 25 percent during this period.

²⁹ Wireless subscribers are using their phones more frequently with average minutes of use (both intra and interstate usage) per subscriber per month increasing from 584 in 2004 to 740 MOUs in the second half of 2005. CMRS Report at 5.

³⁰ NASUCA at 7-9 and Baldwin Affidavit at 10-11; Idaho PUC at 14; Pennsylvania PUC at 2-3. The Wisconsin PSC urges the Commission to re-examine the gross allocators.

³¹ Dr. Robert Laube Affidavit at 19, 22.

turn a “fixed” cost into a “variable” cost. Adoption of Dr. Laube’s proposal would be a step backwards and at odds with the Commission’s efforts to reform separations.

Qwest also opposes a unilateral change to the gross allocator, as proposed by the Idaho and Pennsylvania PUCs.³² While Qwest favors the potential use in the future of a small number of fixed allocators for separations purposes,³³ the selection of any such fixed allocators and their levels (*i.e.*, percentage splits between jurisdictions) should be part of comprehensive separations reform rather than “piecemeal” changes. Problems with the pre-freeze Part 36 rules cannot be remedied by “tinkering” with individual rules. Rather than wasting its resources addressing alleged cost allocation anomalies in the Part 36 rules, the Commission should start with a “clean slate” and focus on its goals of developing a set of rules that are simple to administer and competitively neutral.

VII. IT IS NOT NECESSARY TO SUBJECT BROADBAND SERVICES TO PART 64 PRIOR TO SEPARATIONS

NASUCA and its experts argue that costs associated with broadband services such as DSL should be removed using the Part 64 cost allocation rules prior to separations.³⁴ Qwest opposes this proposal. It is not necessary and would impose unnecessary expense on LECs.

Part 64 requires LECs to remove the costs of activities that are classified as nonregulated from their regulated accounts. In its *Broadband Order*, the Commission found, in accordance with Section 32.23 (*i.e.*, since the Commission did not preemptively deregulate any similar state services), that broadband services previously treated as regulated services should continue to be

³² Idaho PUC at 15; Pennsylvania PUC at 2-3.

³³ Qwest at 11, 17-18.

³⁴ NASUCA at 8, Baldwin Affidavit at Section VI, and Laube Affidavit at 16-20.

treated as regulated for Part 64 purposes “until such time as the Commission finds otherwise.”³⁵ In addition to complying with Section 32.23, the Commission also found that requiring LECs to apply Part 64 allocations to broadband services “would impose significant burdens . . . with little discernible benefit.”³⁶ The Commission’s decision to treat broadband costs as regulated for accounting purposes does not affect state ratemaking, as the Commission observed in the *Broadband Order*.³⁷ As such, the Commission should reject NASUCA’s proposal that LECs’ broadband services be treated as nonregulated services for Part 64 purposes.

VIII. SERVICE BUNDLING BENEFITS CUSTOMERS OF REGULATED SERVICES

Contrary to the assertions of NASUCA, service bundling benefits customers of LEC regulated services. Rather than viewing LEC service bundling as a normal response to competition that benefits many customers, NASUCA and its expert, Ms. Baldwin, see it as an anti-competitive technique.³⁸ On this basis, they claim that more regulation is necessary, including additional cost assignment rules. Such arguments against bundling have little, if anything, to do with separations and should be rejected. Moreover, rather than harming consumers, the Commission has found in the past that bundling reduces costs for consumers.³⁹

Every regulated LEC service that is included in a service package (*i.e.*, bundle) is also available on a stand-alone basis at the approved tariffed rate. If either state or interstate

³⁵ See, *Broadband Order*, 20 FCC Rcd at 13924-25 ¶ 130.

³⁶ *Id.* at 14925 ¶ 131.

³⁷ “Each regulatory jurisdiction applies its own ratemaking processes to the amounts assigned to it by part 36.” *Id.* at 14924 ¶ 129.

³⁸ NASUCA at 10-11 and Baldwin Affidavit at 85-86.

³⁹ See *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, 1998 Biennial Regulatory Review – Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access And Local Exchange Markets*, Report and Order, 16 FCC Rcd 7418, 7426-27 ¶ 15, 7438-39 ¶¶ 33-35 (2001) (“*CPE Bundling Order*”).

regulated rates are excessive as NASUCA asserts – and Qwest disputes that they are – there are sufficient mechanisms currently in place in each jurisdiction to address any such concerns without adding additional complexities to the separations process. As the Commission has recognized, state law and state regulatory agencies provide adequate protection for consumers.⁴⁰

The risk of LECs engaging in anti-competitive conduct as a result of bundling regulated and non-regulated services is quite low and is out-weighted by the consumer benefits of bundling.⁴¹ In the *CPE Bundling Order*, the Commission found that “allowing carriers to market products and services together at a single price, but requiring them to offer the components of the bundle to consumers separately, ensures that carriers cannot restrain competition or impede customer choice.”⁴² In this same *Order*, in allowing dominant carriers to bundle enhanced services and basic telecommunications services, the Commission rejected claims that its existing cost allocation rules would not prevent cross-subsidization.⁴³ Prohibiting LECs from offering bundled service packages or imposing additional regulation on LECs in the provision of such service packages would harm consumers and give LECs’ competitors an unfair competitive advantage.

⁴⁰ See *id.*, 16 FCC Rcd at 7444 ¶ 44, and see also *id.* at 7425 ¶ 12, 7445 ¶ 45.

⁴¹ In allowing incumbent LECs to bundle regulated transmission services with CPE and enhanced service, the Commission found that the ability of incumbent LECs to engage in anti-competitive cross-subsidization is minimized by state requirements that local exchange service be available at unbundled tariffed rates and the Commission’s price cap and accounting rules. See *id.*, 16 FCC Rcd at 7438-41 ¶¶ 33-38, 7444-45 ¶ 45.

⁴² *Id.*, 16 FCC Rcd at 7428 ¶ 18.

⁴³ *Id.*, 16 FCC Rcd at 7444-45 ¶ 45.

IX. THE COMMISSION SHOULD REJECT STATE PUCS' PROPOSED "EXIT RAMP" CONDITIONS

Several State PUCs propose that LECs be required to satisfy certain "exit ramp" conditions before separations can be eliminated for individual LECs.⁴⁴ The Commission should reject the PUCs' proposal. Not only do the PUCs propose that the Commission condition relief from separations on an issue over which the Commission has no jurisdiction (*i.e.*, waiver of any state claim that a carrier's property was unlawfully confiscated), but the PUCs' overly-rigorous conditions ignore the fact that there may be significant differences among state laws governing the provision of telecommunications services. Furthermore, individual LECs face different types of state regulation and, to the extent an individual LEC seeks relief from separations pursuant to a forbearance petition, the Commission has sufficient authority to forbear from enforcing its separations rules under Section 10 of the Act.⁴⁵ As such, there is no need to adopt another set of general requirements.

While there may be a need for some sort of separations methodology for some LECs for the foreseeable future,⁴⁶ there is no need for any such separations approach to be complicated or burdensome.⁴⁷ The Commission should not mistake the possible need for separations with a requirement that the pre-freeze Part 36 rules be used in any form. "[S]eparations rules should, at

⁴⁴ Idaho PUC at 5-8; Iowa Utilities at 1-4; Vermont PSB at 6-9.

⁴⁵ 47 U.S.C. § 160.

⁴⁶ As Qwest noted in its comments, once state and federal regulatory authorities adequately relieve incumbent LECs from common carrier regulation as a result of competition, then *Smith v. Illinois Bell* will become moot and there will not be a need for separations rules of any type. Qwest at 16.

⁴⁷ *Id.* at 14-16.

the very least, encourage, rather than impede, competition in today's telecommunications markets and impose minimal administrative cost.”⁴⁸

X. THERE IS NO JUSTIFICATION FOR ISSUING A DATA REQUEST AT THE PRESENT TIME

No commenting party presents any compelling reason why a data request should be issued in the near future in this proceeding. NASUCA argues that a detailed data request is necessary because with the separations freeze and the use of frozen factors, separations information has not been updated in five years.⁴⁹ However, this should not be a surprise to NASUCA or anyone else since the Commission explicitly relieved LECs from the obligation of performing separations studies during the pendency of the freeze.⁵⁰ The Commission's objective was to “stabilize and simplify the separations process” while the Commission worked on comprehensive separations reform.⁵¹ Nothing has changed with the extension of the separations freeze that would justify requiring LECs to perform separations studies to respond to a data request that is based on obsolete separations rules. Furthermore, as Qwest indicated in its comments, it is doubtful that Qwest or any other LEC would be able to perform traditional separations studies in a timely manner due to a lack of necessary systems and manpower.⁵²

No purpose would be served in issuing a data request until the Commission has first adopted a new simplified, competitively-neutral separations process. Only then would it make

⁴⁸ *Id.* at 16.

⁴⁹ NASUCA at 12.

⁵⁰ *See, In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, Report and Order, 16 FCC Rcd 11382, 11388-89 ¶ 11 (2001).

⁵¹ *Id.* at 11383 ¶ 1.

⁵² Qwest at 16-20.

sense to “issue a targeted data request to determine whether the industry can provide the information necessary to implement separations reform without an undue burden.”⁵³

XI. CONCLUSION

For the foregoing reasons, Qwest requests that the Commission reject commenters’ arguments concerning: states’ authority over separations; the level of interstate rates; the level of competition facing LECs; subjecting broadband services to Part 64; service bundling; conditions for eliminating separations; and the need to issue a data request.

As Qwest indicated in its comments, separations reform should either be preceded by IC and USF reform or occur simultaneously with such reforms.⁵⁴ The resulting separations rules should be administratively simple and competitively neutral. Qwest continues to believe that the Commission can best achieve such a result with the use of a small number of fixed allocation factors. Finally, if the Commission is unable to reform separations during the three years for which the separations freeze has been temporarily extended, it should continue the freeze of existing category relationships and allocation factors until separations reform can be accomplished. This will remove regulatory uncertainty.

Respectfully submitted,

QWEST CORPORATION

/s/ Timothy M. Boucher

By: Craig J. Brown
Timothy M. Boucher
607 14th Street, N.W., Suite 950
Washington, DC 20005
(303) 383-6608

Of Counsel,
James T. Hannon

Its Attorneys

November 20, 2006

⁵³ *Id.* at 17.

⁵⁴ *Id.* at 4-7, 33.

CERTIFICATE OF SERVICE

I, Ross Dino, do hereby certify that I have caused the foregoing **REPLY OF QWEST CORPORATION** to be 1) filed via the FCC's Electronic Comment Filing System with the Office of the Secretary of the FCC in CC Docket No. 80-286; 2) served via email on Ms. Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau at Antoinette.stevens@fcc.gov; 3) served via email on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com; and 4) served via First Class United States Mail, postage prepaid, on all other parties as listed on the attached service list.

/s/ Ross Dino

Ross Dino

November 20, 2006

Peter Bluhm
Christopher Campbell
Vermont Public Service Board
Drawer 20
112 State Street
Montpelier, VT 05620-2601

Shana Knutson
Nebraska Public Service Commission
300 The Atrium Building
1200 N Street
Lincoln, NE 68508

Manny Staurulakis
John Staurulakis, Inc.
Suite 200
7852 Walker Drive
Greenbelt, MD 20770

Gerard J. Duffy.....WTA
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
Suite 300
2120 L Street, N.W.
Washington, DC 20037

Jeffrey S. Linder.....Verizon
Suzanne Yelen
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, DC 20006

Edward Shakin
Christopher M. Miller
Verizon
Suite 500
1515 North Courthouse Road
Arlington, VA 22201-2909

James W. Olson
Indra Sehdev Chalk
Jeffrey S. Lanning
United States Telecom Association
Suite 400
607 14th Street, N.W.
Washington, DC 20005-2051

Joseph K. Witmer
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

John Ridgway
Iowa Utilities Board
350 Maple Street
Des Moines, IA 50319

Donald L. Howell, II
Idaho Public Utilities Commission
POB 83720
Boise, ID 83720-0074

Richard M. Sbaratta
BellSouth Corporation
Suite 4300
675 West Peachtree Street, N.E.
Atlanta, GA 30375-0001

Terri L. Hoskins
Christopher Heimann
Gary L. Phillips
Paul K. Mancini
AT&T Inc.
10th Floor
1120 20th Street, N.W.
Washington, DC 20036

Daniel R. Ebert
Public Service Commission of Wisconsin
POB 7854
Madison, WI 53707-7854

Alexicon Telecommunications Consulting
Suite 201
2055 Anglo Drive
Colorado Springs, CO 80918

David C. Bergmann
Office of the Ohio Consumers' Counsel
Suite 1800
10 West Broad Street
Columbus, OH 43215-3485

NASUCA
Suite 101
8380 Colesville Road
Silver Spring, MD 20910

Seema M. Singh
Christopher J. White
Department of the Public Advocate
Division of Rate Counsel
POB 46005
Newark, NJ 07101

William C. Black
Wayne R. Jortner
Maine Office of Public Advocate
SHS#112
Augusta, ME 04333

Lisa Zaina
Independent Telephone & Telecommunications
Alliance
Suite 600
1300 Connecticut Avenue, N.W.
Washington, DC 20036

Richard A. Askoff
National Exchange Carrier Association, Inc.
80 South Jefferson Road
Whippany, NJ 07981

Daniel Mitchell
Jill Canfield
Karlen J. Reed
National Telecommunications Cooperative
Association
10th Floor
4121 Wilson Boulevard
Arlington, VA 22203

Stuart Polikoff
Organization for the Promotion and Advancement
of Small Telecommunications Companies
Suite 700
21 Dupont Circle, N.W.
Washington, DC 20036

Ray J. Riodan
Eastern Rural Telecom Association
Suite 202
7633 Ganser Way
Madison, WI 53719